Case No. 15 - 16604

In The

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BISHOP PAIUTE TRIBE,

Plaintiff – Appellant,

v.

INYO COUNTY; WILLIAM LUTZE, Inyo County Sheriff; and THOMAS HARDY, Inyo County District Attorney,

Defendants – Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
U.S.D.C. Case No. 1:15 – CV – 00367 – GEB–JLT

BRIEF OF APPELLEES INYO COUNTY; WILLIAM LUTZE, Inyo County Sheriff; and THOMAS HARDY, Inyo County District Attorney

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1(a), F.R.A.P.

Appellee INYO COUNTY is a governmental entity and a political subdivision of the State of California. Appellee WILLIAM LUTZE is an individual, and is being sued in his official capacity as the elected Sheriff of Inyo County. Appellee THOMAS HARDY is an individual, and is being sued in his official capacity as the elected District Attorney of Inyo County. Accordingly, no Corporate Disclosure Statement is required for these appellees pursuant to Rule 26.1(a) of the Federal Rules of Appellate Procedure.

DATED: March 16, 2016

s/ John Douglas Kirby

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STATEMENT OF (LACK OF) JURISDICTION

Pursuant to Circuit Rule 28-2.2, appellees respectfully inform the Court that they do not agree with the statement by appellant Bishop Paiute Tribe (Tribe) that the district court has subject matter jurisdiction over the case presented by the Tribe's Amended Complaint. The Amended Complaint is set forth at Tribe's Excerpts of Record, Tab 10.[1]

Instead, appellees first agree with the finding by the district court that it (the district court) does not have subject matter jurisdiction due to lack of the requisite ripeness and immediacy of a justiciable case or controversy. In addition, appellees state, and respectfully submit, that the district court also does not have subject matter jurisdiction because the case that the Tribe presents does not arise "under the Constitution, laws, or treaties of the United States" as is required under both 28 U.S.C. § 1331 (Federal question), and 28 U.S.C § 1362 (Indian tribes).

Finally, appellees do not agree with the Tribe's assertion that the district court has jurisdiction under 28 U.S.C. § 2201 (Creation of remedy), and 28 U.S.C. § 2202 (Further relief), in that neither of these statutes establishes jurisdiction. Instead, both statutes merely address a type of

[1] The Tribe's Excerpts of Record will subsequently be abbreviated as "ER."

remedy, or relief, that may be available to litigants in appropriate cases where district court jurisdiction is otherwise proper.

Appellees agree with the Tribe that the district court's ruling and judgment below is appealable to this Court pursuant to 28 U.S.C. § 1291 (Final decisions of district courts).

STATEMENT OF ISSUE PRESENTED FOR REVIEW

The issue presented for review in this appeal is whether or not the district court has subject matter jurisdiction over the case that was presented to it by the Tribe in the Tribe's Amended Complaint.

This issue is properly broken down into two separate, and somewhat independent, parts – or questions, re subject matter jurisdiction, as follows:

Question 1 – Is there real, immediate, and substantial controversy between the parties (ripeness)?

One of these parts, or questions, is the question that was specifically addressed by the district court below. That question is whether or not (assuming the Tribe's case in the first instance arises "under the Constitution, laws, or treaties of the United States," as required under both 28 U.S.C. § 1331 and 28 U.S.C § 1362) the Tribe's case – or claim – was "ripe for judicial review since a federal court has an independent duty to consider its jurisdiction." See district court's Order Dismissing Amended Complaint for

Lack of a Justiciable Case or Controversy; Tribe's ER, Tab 1, page 1, lines 24-26); hereinafter the court's "Order."

At the beginning of its Order, the district court summarized its finding by stating that the Tribe's Amended Complaint "does not contain factual allegations demonstrating a justiciable case or controversy over which the federal court has jurisdiction." (Tribe's ER, Tab 1, page 1, lines 26-28.)

Thereafter, the court set forth its detailed assessment and analysis of the issue, and applicable law, and concluded by finding that "The Tribe therefore has not shown the 'immediacy and reality' of a 'substantial controversy between the parties' that is required to establish a justiciable case or controversy." (Tribe's ER, Tab 1 page 7, lines 24-27.)

Question 2 – Does Tribe's case arise under Constitution, laws, or treaties of United States?:

The second part, or question, of the subject matter jurisdictional issue herein presented for review is, some might say, actually the first that might be considered; and such is the question of whether or not the Tribe's case arises "under the Constitution, laws, or treaties of the United States," as is required under both 28 U.S.C. § 1331 (Federal question), and 28 U.S.C § 1362 (Indian tribes).

If the Tribe's case does not arise "under the Constitution, laws, or treaties of the United States," then the inquiry simply ends there; and there is no federal court subject matter jurisdiction – regardless of the presence, or absence, of any real, immediate, and/or substantial controversy.

Accordingly, appellees herein, INYO COUNTY, WILLIAM LUTZE, the elected Sheriff of Inyo County, and THOMAS HARDY, the elected District Attorney of Inyo County, will first address the second of the above two questions: The question of whether, contrary to the Tribe's allegation as a legal conclusion, of the presence of subject matter jurisdiction in paragraph 6 of its Amended Complaint (Tribe's ER, Tab 10, page 3, para 6), the Tribe's case in fact "arises" under "the Constitution, laws, or treaties of the United States."

Appellees respectfully submit that the Tribe's case does not so arise; that accordingly, there is no subject matter jurisdiction of the district court over the Tribe's case; and that therefore, the same should be dismissed. In fact, appellees Inyo County, Sheriff Lutze, and District Attorney Hardy respectfully submit, and request, that this Court consider exercising its authority under Circuit Rule 3-6 "Summary Disposition of Civil Appeals," and dismiss this appeal, without further notice of proceedings, due to lack of subject matter jurisdiction. Circuit Rule 3-6 provides in pertinent part:

> "At any time prior to the disposition of a civil appeal if the Court determines that the appeal is not within its jurisdiction, the Court may issue an order dismissing the appeal without notice of further proceedings."

Note re Addendum: Pursuant to Federal Rules of Appellate Procedure, Rule 28(f), and Circuit Rule 28-2.7, an Addendum setting forth Constitutional provisions, statues, and regulations that are cited in this Brief, and not set forth in the body of the Brief itself, is attached.

STATEMENT OF CASE

The Bishop Paiute Tribe is a federally recognized Indian tribe, and operates a number of businesses and services, including the Paiute Palace gaming casino located in Bishop, CA. (Tribe's ER, Tab 10, para 8 and 12.)

The Tribe has recently created a small tribal law enforcement, or police force, consisting of a total of four "law enforcement" officers. (Tribe's ER, Tab 10, para 14.) The Tribe has no criminal code or ordinances, only civil ordinances; and its law enforcement officers enforce these civil ordinances. (Tribe's ER, Tab 10, para 15.)

None of the Tribe's civil law enforcement officers are California peace officers; none of the Tribe's civil law officers have been qualified through background checks and current training to become current California peace officers; none of the Tribe's civil law enforcement officers have been

deputized under California law by the County Sheriff, under and pursuant to California's legislature-created program that allows for tribal law enforcement officers to be so deputized, after proper background checks and training, and so long as training remains current and they otherwise remain qualified, per California Penal Code §§ 830.6(b) and 832.6; and none of the Tribe's civil law enforcement officers have been qualified under the United States federal program for tribal law enforcement officers obtaining federal law enforcement authority under the Indian Law Enforcement Reform Act of 1990 (ILERA), 25 U.S.C. §§ 2801, et seq., and the Special Law Enforcement (SLEC) program in connection therewith, 25 C.F.R. §§ 12.12 et seq., including 25 C.F.R. § 12.21, which is operated by the federal government through the Department of the Interior and its Bureau of Indian Affairs (BIA). (Tribe's ER, Tab 10, pages 23-25.)

When a law enforcement officer does become a BIA background checked, trained, and qualified law enforcement officer with a SLEC commission from the BIA, that officer becomes eligible for California peace officer powers under California law, in accordance with California Penal Code § 830.8.

Despite not being required to have the current California or federal background checks and training otherwise required for California peace

officers and federal officers, and despite not being required to maintain those personal conduct and training standards, the Tribe hires its civil law enforcement officers as it wishes, and then assigns them the general duties of performing "professional work in assuring compliance with Tribal, State and Federal Law. This is an armed position." (Tribe's ER, Tab 10, page 44, top paragraph "General Duties.")

It is against this background that the Tribe's civil law enforcement officers were regularly, and increasingly, acting outside of their civil law enforcement duties, and committing serious misconduct, both on and off-reservation, with regard to Indians and non-Indians alike, and engaging in the unlawful exercise of California peace officer authority as described by Sheriff Lutze in his letter to the Tribe of January 6, 2015. (Tribe's ER, Tab 10, pages 23-25.)

In this letter to the Tribe, which was entitled "Cease and Desist Order Pursuant to Penal Code § 830.1," [2] Sheriff Lutze outlined the increasing problem, for all residents and other persons within Inyo County – Indian and non-Indian alike – both on and off-reservation – of the increasing unlawful

[2] California Penal Code § 830.1 is the California statute that describes who are California peace officers. Tribal officers, without the deputization made pursuant to the training and qualifications of Penal Code §§ 830.6(b) and 832.6, are not California peace officers.

exercise of California peace officer authority by the Tribe's civil law enforcement officers.

Sheriff Lutze advised the Tribe that its officers "are continuously committing serious violations of California criminal statutes and that these actions have seriously endangered the public welfare both within and outside tribal territory;" that the Sheriff's Office "has repeatedly given notice to Tribal Police that its officers have been illegally exercising state police powers under color of authority of the Bishop Paiute tribal law, notwithstanding federal law;" that the Sheriff's Office "is responding to increasing official and public complaints regarding Tribal Police misconduct;" and that he (Sheriff Lutze) "cannot overly re-emphasize to Tribal Police that its employees are NOT California peace officers and also are NOT federal officers;" and that as such, the Tribe's officers "do NOT have any legal authority … to enforce state or federal laws within or outside tribal property" aside from the rights of citizens arrest, etc., that are available to all private citizens. (Tribe's ER, Tab 10, page 23, 1st and 2nd paragraphs.)

The Sheriff also advised that such [tribal civil] officer misconduct "has severely compromised the officer safety of this Office's personnel as well as case investigations and prosecutions." (Underscore supplied.) (Tribe's ER, Tab 10, page 23, last paragraph.)

Sheriff Lutze then advised the Tribe of numerous "documented instances of illegal exercises of law enforcement authority by Tribal Police" which included "but are not limited to: *Unlawful operation of emergency vehicles off tribal property; Violations of the California Vehicle Code; Illegal detentions; False arrests; Battery (both felony and misdemeanor); Illegal home entries; Illegal searches of persons and property;* [and] *Possession of firearms in public* … outside tribal territory. (Italics in original.) (Tribe's ER, Tab 10, pages 23-24.)

Sheriff Lutze then went on to describe the incident involving tribal civil law enforcement officer Daniel Johnson, which occurred on December 24, 2014, wherein "[r]ather than waiting for the imminent arrival of a deputy sheriff," Johnson "unnecessarily provoked a violent confrontation with the female subject," and "committed felony battery when he "Tasered" the unarmed female whom he outweighed by over 100 pounds (the female's approximate weight: 120 pounds)." (Tribe's ER, Tab 19, page 24, 1st full paragraph.)

Sheriff Lutze advised the Tribe that "Without any justification, he [Johnson] then dragged her out of her vehicle [and] wrestled her to the ground," and further, that "The female was injured and required medical

attention. Consequently, Officer Johnson's actions resulted in his arrest." (Tribe's ER, Tab 10, page 24, 1st full paragraph.)

Sheriff Lutze then advised of four more things in his January 6, 2015, letter to the Tribe, as follows:

(1) Sheriff Lutze reiterated to the Tribe that the Sheriff's Office "has always enjoyed a cooperative professional relationship with Tribal police;" and that the Sheriff's Office "has repeatedly extended its assistance to Tribal Police in its efforts to attain peace officer status for its officers which would further benefit the community; but that "For whatever reasons, these efforts have been ignored as have the warnings detailed in this correspondence." (Underscore supplied.) (Tribe's ER, Tab 10, page 24, 3rd full paragraph); and

(2) The Sheriff then issued his directives regarding the tribal law enforcement officers' continued exercise of California peace officer authority by stating that because tribal law enforcement officers are undisputedly neither California peace officers nor federal officers, they are ordered to: "(A) cease and desist the unlawful exercise of California peace officer authority both within and outside tribal property and (B) cease and desist possessing firearms outside tribal property (e.g. court appearances) and (C) provide this office with prompt written assurance within ten (10) days that Tribal Police

will cease and desist from further acts as explained in this correspondence." (Underscore supplied.) (Tribe's ER, Tab 10, page 24, 4th full paragraph); and

(3) Sheriff Lutze then once again offered to assist the Tribe in obtaining peace officer status for its tribal civil law enforcement officers by stating: "this Office strongly believes that Tribal Police, in achieving federal law enforcement certification, would significantly compliment both our agencies' abilities in serving tribal law enforcement interests. This Office reiterates its commitment towards this important goal and extends every resource to Tribal Police it its efforts towards that goal. This would be a crucial development towards state law enforcement certification as well." (Underscore supplied.) (Tribe's ER, Tab 10, page 24, 4th full paragraph); and

(4) Finally, Sheriff Lutze relayed to and assured the Tribe that his correspondence and directives regarding the cessation of exercise of California peace officer authority "has received the utmost consideration with the concurrence of all local enforcement authorities and was necessitated by the escalating seriousness of Tribal Police misconduct which cannot be allowed to continue to endanger the public welfare." (Underscore supplied.) (Tribe's ER, Tab 10, page 24, 5th full paragraph.)

In response to Sheriff Lutze's above described letter, the Tribe responded, in writing, nine days later, on January 15, 2015, via a letter of that same date, wherein the Tribe acknowledged and stated:

(A) The Tribe was in possession of the Sheriff's January 6, 2015, letter directing tribal police "to cease and desist (1) 'the unlawful exercise of California peace officer authority both within and outside tribal property'; and (2) 'possessing firearms outside of tribal property (e.g. court appearances).'" (Tribe's ER, Tab 4, page 6, first paragraph); and

(B) That it understood that the Sheriff was concerned that its officers "have acted 'illegally' and have 'endangered the public welfare,'" and that although it (the Tribe) disagreed with the facts asserted in the Sheriff's letter, the Tribe understood that the Sheriff's concerns were "motivated by a legitimate desire to protect the public, a desire that we share." (Tribe's ER, Tab 4, page 6, 2nd paragraph); and

(C) That the Tribe would like to meet with the Sheriff within the next couple days to reach an understanding that is mutually agreeable (Tribe's ER, Tab 4, page 6, 2nd paragraph); and

(D) That as a show of good faith and to "keep the peace" the Tribe had taken the following action:

> "… we have directed our tribal police officers to ensure that the matters outlined in your January 6, 2015 letter are addressed.

> Specifically, our tribal law enforcement officers will not exercise California peace officer authority on or off the reservation. In addition, our tribal police officers will carry their firearms only on the Bishop Paiute Indian Reservation with the exception of: (a) daily patrols that require them to cross State Hwy 168 and when traversing U.S. Highway 395, and (b) traveling to and from their homes off the reservation. The officers have been directed that they are not authorized by the Tribe to expose their firearms off reservation except in compliance with applicable state law." (Underscore supplied.) (Tribe's ER, Tab 4, page 6, 3rd paragraph.)

Less than two months later, as the prosecution of Daniel Johnson (a non-Indian) was getting started in Inyo County Superior Court, for use of excessive force (a Taser) on the 120-pound non-Indian woman mentioned above and related charges, this lawsuit was filed by the Tribe against Inyo County, the County Sheriff, and the County District Attorney, without notice.

SUMMARY OF THE ARGUMENT

The district court, which is a court of limited jurisdiction, does not have subject matter jurisdiction over the case that was presented to it by the Tribe in its Amended Complaint.

This is so for two reasons. The first is that the case that the Tribe presented to the district court in its Amended Complaint does not arise "under the Constitution, laws, or treaties of the United States," as is required under both 28 U.S.C. § 1331 (Federal question), and 28 U.S.C § 1362 (Indian

tribes); and these two statutes – 28 U.S.C. §§ 1331 and 1362 – are the only two actual jurisdictional statutes that are claimed by the Tribe.[3]

The second reason that the district court does not have subject matter jurisdiction over the case presented in the Tribe's Amended Complaint is set forth in the ruling made by the district court. That ruling was summarized by the court on page 1 of the court's Order below (Tribe's ER, Tab 1, page 1, lines 24-26), where the court stated that the Tribe's case was not ripe for judicial review because the Tribe's Amended Complaint (referred to by the court as the "FAC" or First Amended Complaint) does not "contain factual allegations demonstrating a justiciable case or controversy over which the federal court has jurisdiction." (See court's Order, @ Tribe's ER, Tab 1, page 1, lines 24-28.)

Stated more completely, on page 7 of the court's Order, after a detailed assessment and analysis of the issue, and the applicable law, the district court concluded with its finding that "The Tribe therefore has not shown the 'immediacy and reality' of a 'substantial controversy between the parties' that

[3] It is understood that the Tribe also asserted district court jurisdiction, in paragraph 6 of its Amended Complaint, under 28 U.S.C § 2201 (Creation of remedy), and 28 U.S.C. § 2202 (Further relief). However, neither of these statutes establishes jurisdiction. Instead, both statutes merely address a type of remedy, or a type of relief, that may be available to litigants in appropriate cases, where district court jurisdiction is otherwise found.

is required to establish a justiciable case or controversy." (Tribe's ER, Tab 1 page 7, lines 24-27.)

Appellees Inyo County, Sheriff Lutze, and District Attorney Hardy, agree with the findings and ruling of the district court.

STANDARD OF REVIEW

Appellees agree that this Court reviews all issues of subject matter jurisdiction de novo; and that an objection to jurisdiction can be made at any time, including on appeal.

ARGUMENT

The four statutes by which the Tribe asserts subject matter jurisdiction in the district court are set forth in paragraph 6 of its Amended Complaint. They are 28 U.S.C. § 1331 (Federal question); 28 U.S.C § 1362 (Indian tribes); 28 U.S.C. § 2201 (Creation of remedy); and 28 U.S.C. § 2202 (Further relief). (Tribe's ER, Tab 10, page 3, para 6.) These statutes provide as follows:

> **28 U.S.C. § 1331. Federal question**
>
> The **district courts shall have original jurisdiction** of all civil actions **arising under the Constitution, laws, or treaties of the United States.** (Emphasis supplied)

_____

28 U.S.C. § 1362. Indian tribes

The **district courts shall have original jurisdiction** of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy **arises under the Constitution, laws, or treaties of the United States.** (Emphasis supplied)

---

28 U.S.C. § 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

> **28 U.S.C. § 2202. Further relief**
>
> Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.
>
> _____

As is readily seen – only the first two statutes, 28 U.S.C. §§ 1331 (Federal question) and 28 U.S.C. § 1362 (Indian tribes), are statutes that establish jurisdiction. The other two statutes – 28 U.S.C. §§ 2201 and 2202 – do not establish jurisdiction. Instead, they simply provide for a specific remedy (declaration of rights in § 2201, and further necessary or proper relief in § 2202), in cases that are properly before the district court per jurisdiction otherwise established.

1. Tribe fails to substantively plead and identify actual federal jurisdiction.

With regard to the claims of federal jurisdiction made by the Tribe in its Amended Complaint, at paragraph 6 thereof (Tribe's ER, Tab 10, page 3, para 6), the Tribe completely fails to identify the actual Constitutional provision, law, or treaty, that the Tribe relies on as being one which establishes jurisdiction in the district court.

Instead, in each of its allegations of jurisdiction – paragraphs 6(a) and 6(b) of its Amended Complaint – the Tribe completely omits this aspect of requisite pleading, and simply alleges, in a legal conclusion, absent any specified legal basis, that the Tribe's case (its claims) simply "arise under the Constitution and the laws of the United States." The exact text of the Tribe's allegations in paragraph 6 of its Amended Complaint is:

> 6. This Court's jurisdiction is based on the following:
>
> (a) 28 U.S.C. § 1331, in that the Tribe's claims arise under the Constitution and the laws of the United States;
>
> (b) 28 U.S.C. § 1362 in that the Tribe is a federally recognized Tribe which asserts that defendants' actions violate the Constitution of the United States.

The Tribe completely fails to identify which – if any – of the however-many-thousands of total, combined, Constitutional provisions, laws, and treaties of the United States, which are in existence, that the Tribe alleges this case "arises under."

We are left to guess – I suppose. Or are we? Must we? Is it the First Amendment to the Constitution? Or the Fourth Amendment? Fifth? Sixth? Or, rather, is it instead one of the thousands of Acts of Congress that are

among the "laws of the United States?" If so, which? Or, is it some treaty? Which? Where is it? What does it say?

It is respectfully submitted that it is and was incumbent upon the Tribe to specify and plead the Constitutional provision, law, or treaty under which it claims that this case arises. The well respected Rutter Group – California Practice Guide: Federal Civil Procedure Before Trial – California & Ninth Circuit Edition (March 2016 Update), at Section 2:1000, et seq., states the rule, and provides the authority, as follows (please note: highlighting has been supplied):

> [2:1000] Pleading Federal Question Jurisdiction:
>
> * * *
>
> A complaint in any federal action must contain "a short and plain statement of the grounds for the court's jurisdiction." [FRCP 8(a)(1); *see* ¶*8:500*]
>
> a. [2:1001] **Identifying federal law:** In federal question cases, this requires plaintiff to *identify* the particular provisions of federal law relied upon. (It is also a good idea to state that the action is founded on 28 USC § 1331.)
>
> (1) [2:1002] ***FORM:*** "This action arises under the Constitution of the United States, Article …, Section … (or the … Amendment to the Constitution of the United States, Section …), as hereinafter more fully appears. The jurisdiction of this court is founded on 28 USC § 1331."
>
> OR

> "This action arises under the Act of …, … Stat. …, Title … United States Code, Sec. …, as hereinafter more fully appears. The jurisdiction of this court is founded on 28 USC § 1331."
> OR
>
> "This action arises under the Treaty of the United States (*describe the treaty*) dated …, as hereinafter more fully appears. The jurisdiction of this court is founded on 28 USC § 1331." [See FRCP, Official Form 2]
>
> [2:1003] ***PRACTICE POINTER:*** If several possible federal claims are involved, be sure to allege them all. If one fails, you will have the others to rely on. Otherwise, you will face dismissal of the action. (Bold in original text)
>
> b. [2:1004] **Pleading statutory requirements:** It is not enough, of course, simply to identify the federal law under which the claim is asserted. The "well-pleaded complaint" rule requires plaintiff to set forth the federal claim in sufficient detail that a right to recover under federal law is apparent….

It is noted that, in the Brief of Appellant herein, at pages 1-2 in the "Statement of the Issue" section, the Tribe states that the issue is "Whether the Tribe's case presents a case or controversy under Article III of the United States Constitution in light of the defendants' arrest and ongoing prosecution of the Tribe's law enforcement officer…." However, this is of no help whatsoever to the Tribe.

First, Article III is not alleged in the Tribe's Amended Complaint as a jurisdictional basis; and, even if it were, the right that the Tribe here asserts

does not come from the Constitution – it is alleged to be "inherent" in the Tribe – and inherent means, of course, always was, always there, inherent from creation – even, apparently, pre-dating the ratification of the Constitution itself in 1778 (and if not, when did it become "inherent" – upon the enactment of some statute? Or, just when?).

Further, the only possible portion of Article III that it seems the Tribe might here rationally be alluding to is that portion of Article III, § 2, which simply says – comparable to and consistent with 28 U.S.C. §§ 1331 and 1362 – that federal judicial power shall extend to all cases "arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

However, this reference to "Article III" is in the Brief of Appellant, and not in the Tribe's Amended Complaint; and more importantly, it is effectively a reference only to the genesis authority of the parallel language of Congress' jurisdictional statutes of 28 U.S.C. §§ 1331 and 1362.

Thus, by way of the foregoing, the Tribe has totally failed to properly well-plead its jurisdictional basis; and, accordingly, for this reason alone, the Tribe's case and appeal should, respectfully, be dismissed.

2. Proving the negative?.

If the Court declines to dismiss this appeal as above submitted, what do we now do – try to prove a negative? Such as: "Tribe – you were required to state and identify the law under which your case arises – but you did not do so. Well then, let's work at proving the negative – that there is none."

But, even if we do this, first – we best look at exactly what the Tribe is asking of this Court. The Tribe's Prayer for prospective relief is quoted by the district court in its Order, at page 6 thereof, and is addressed directly and correctly in the Order. (Tribe's ER, Tab 1, page 6.) We also find a statement of the prospective relief re-stated at page 32 of the Tribe's Brief of Appellant herein (as the second full paragraph on that page); and at pages 32 and 33 of the same Brief (as the last paragraph on page 32 which continues on at page 33). It is at these pages that the Tribe summarizes exactly what it is seeking:

> Brief of Appellant, page 32, second paragraph:
>
> The district court can provide the Tribe the relief it seeks to resolve the dispute between the parties. A declaration affirming that the Tribe has inherent authority, recognized and affirmed under federal law, to stop, restrain, detain, investigate violations or possible violations of tribal, state, or federal law by non-Indians on tribal lands and to deliver the non-Indian to the proper law enforcement authorities, will clarify that tribal officers are not acting as state peace officers or as general members of the public when they take such actions against non-Indians on the Reservation.

and –

> Brief of Appellant, pages 32-33, beginning at last paragraph on page 32:
>
> Once declared, the Tribe's request for a prospective injunction against future criminal charges and prosecution against its officers when and while exercising their lawful [inherent] authority can be issued by the district court to further resolve any future misunderstandings between the parties as to their respective rights.

We proceed from there:

(a) No Constitutional provision provides such inherent authority or jurisdiction.

A review of the Constitution reveals that there is no Constitutional provision that provides or recognizes such claimed inherent authority being vested in an Indian tribe.

(b) No federal statutory provision provides such inherent authority or jurisdiction.

A review of the Indian Gaming Regulatory Act (25 U.S.C. §§ 2501, et seq.), a review of Public Law 280 (18 U.S.C. § 1162, 28 U.S.C. § 1360), and a review of all other federal laws that could be located regarding Indian activities, revealed that no located federal statutory provision provides or recognizes any such claimed inherent authority.

Very interestingly, however, there is a federal statutory program, enacted by Congress, and regulations adopted in connection therewith, that provides for tribal law enforcement officers to apply for, and receive, upon completing the prescribed training, and thereafter exercise, federal peace officer power to investigate violations and possible violations of federal law by all persons upon Indian lands, as federal officers who have received the "Special Law Enforcement Commission" authorized by that Act, and the regulations under that Act. The Act of which we speak is the federal Indian Law Enforcement Reform Act of 1990 (ILERA), which is located at 25 U.S.C. §§ 2801, et seq., and the federal regulations in connection therewith, including 25 C.F.R. §§ 12.21 et seq.

The Indian Law Enforcement Reform Act is implemented by the federal Department of the Interior, Bureau of Indian Affairs. The program was explained to the Senate Committee on Indian Affairs at a Senate hearing on March 17, 2008, by Mr. Carl Artman, Assistant Secretary for Indian Affairs at the Department of Interior, as follows (highlighting added). The full text of Mr. Artman's testimony can be seen at:

https://www.doi.gov/ocl/hearings/110/LawAndOrderInIndianCountry_031708

Statement for the Record

of

Carl Artman

Assistant Secretary

Indian Affairs

to the

Senate Committee on Indian Affairs

on

Law and Order in Indian Country

Mr. Chairman and Members of the Committee, I am pleased to provide this statement for the record on behalf of the Department of the Interior regarding Law and Order in Indian Country. The Bureau of Indian Affairs (BIA) has a service population of about 1.6 million American Indians and Alaska Natives who belong to 562 federally recognized tribes. The BIA supports 191 law enforcement programs with 42 BIA-operated programs and 149 tribally-operated programs. Approximately 78 percent of the total BIA Office of Justice Services' (OJS) programs are outsourced to Tribes.

The OJS provides a wide range of justice services to Indian country, including police services, criminal investigation, detention facilities, tribal courts, and officer training by the Indian Police Academy.

* * *

Special Law Enforcement Commission (SLEC) Training and Certification

In an effort to make special commissions available to tribal, state, and local law enforcement, the BIA encourages cross-commissioning so that Federal, tribal, and state authorities can make arrests for each jurisdiction. For instance, BIA offers qualified tribal and state law enforcement officers Federal Special Law Enforcement Commissions (SLEC) so they can

> enforce federal law. This closes loopholes and allows police to focus on investigating the crime instead of sorting out jurisdictional details, which can be done later with the assistance of legal counsel.
>
> Supplemental training is provided by the BIA and, more recently, through the offices of the United States Attorneys to utilize both tribal and state law enforcement officers in Federal and tribal policing as authorized under the Law Enforcement Reform Act. The Office of the Solicitor and the United States Department of Justice offices determine extension of Federal Tort Claim coverage as authorized under the Reform Act. For the Committee's information, please find attached Table C, which illustrates the SLEC count for all District Locations.

The Indian Law Enforcement Reform Act referred to by Mr. Artman is, of course, the Act of Congress described above, and is the Act by which tribal law enforcement officers obtain proper training, where there will be Federal Tort Claim coverage as authorized under the Act for claimed excessive force and other claimed misconduct of the tribal officers (because the employing Tribes, of course, have sovereign immunity to civil suit), and whereby tribal officers may conduct investigations of and enforce federal law in Indian country, as officers with a Special Law Enforcement Commission (SLEC).

The existence of this Act is an act of Congress speaking – quite directly – to the question which is at issue here – that of tribal law enforcement officers enforcing federal law on reservations. It thus displaces any claimed assertion that might hereafter be made by the Tribe that federal "common

law" is the law of the United States from which the claims herein made by the Tribe "arise under." *American Elec. Power Co., Inc. v. Connecticut* (2011) 564 U.S. 410, 131 S.Ct. 2527, 2537.

This principal is also explained in the aforementioned well respected Rutter Group – California Practice Guide: Federal Civil Procedure Before Trial – California & Ninth Circuit Edition (March 2016 Update), at Section 2:508, as follows:

> [2:508] **Congressional displacement of federal common law:** Congress displaces federal common law when it passes laws that "speak to the subject at issue." [*American Elec. Power Co., Inc. v. Connecticut* (2011) US , , 131 S.Ct. 2527, 2537—Clean Air Act displaced federal common law nuisance actions; *Armstrong v. Exceptional Child Ctr., Inc.* (2015) US , , 135 S.Ct. 1378, 1386 (plurality opn.)—court's equity authority limited by Medicaid Act.

(c) No treaty provides authority or jurisdiction.

A search of the Tribe's information website, and a search of other online treaty sources, including without limit federal government treaty sources, reveals no treaty or other agreement by the United States (or California, for that matter) with the Tribe that provides the Tribe with the authority it seeks – to investigate non-Indians for suspected violations of state and federal criminal law, and to detain and forcibly restrain them, during those investigations (for unspecified durations, one might add).

(d) No common law provides authority or jurisdiction.

It is true that, in some cases, federal common law can provide the "law" of the United States that is necessary to find that a case "arises under" federal law, and thereby enable federal jurisdiction under 28 U.S.C § 1331 (Federal question) or 28 U.S.C. § 1362 (Indian tribes).

However, here, even if the Tribe had alleged in its Amended Complaint that there was some specific and identified federal common law under which the Tribe's case arises – which the Tribe does not – any such claim of jurisdiction fails. This is because any such common law, that might have possibly provided jurisdiction, has been displaced by the Act of Congress speaking to the issue of tribal law investigation and enforcement of federal law, on Indian reservations, through the Indian Law Enforcement Reform Act of 1990, and the SLEC commissions provided by Congress in connection therewith. 25 U.S.C. §§ 2801, et seq., and the regulations there-under at 25 C.F.R. §§ 12.21 et seq.

Accordingly, by way of all of the foregoing, the Tribe's case does not arise under the Constitution, laws, or treaties of the United States, as is required by both 28 U.S.C. § 1331 (Federal question) and 28 U.S.C. § 1362 (Indian tribes), or as required by Article III, § 2 of the Constitution. This case and appeal must, therefore and respectfully, be dismissed for lack of

subject matter jurisdiction.

3. The district court does not have subject matter jurisdiction to declare law on the claimed tribal right to investigate state criminal law violations by non-Indians on Indian reservations.

The Tenth Amendment to the United States Constitution provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." One of the powers reserved to the states is the state's police power; and the Constitution, of course, does not specifically – or even impliedly – grant to Indian tribes the power to investigate and enforce a state's criminal law within Indian country. Therefore, this power is "reserved to the states, respectively, or to the people," and the district court has no power to order otherwise.

4. The district court was correct in finding a lack of the necessary 'immediacy and reality' of a 'substantial controversy between the parties' required to establish a justiciable case or controversy (ripeness).

As stated above, appellees Inyo County, Sheriff Lutze, and District Attorney Hardy, agree with the district court's ruling made herein.

The January 6, 2015, letter by Sheriff Lutze to the Tribe directed that the Tribe's civil tribal law enforcement officers make two substantive

changes to their actions, both of which the Tribe has complained about and used as a basis for this lawsuit.[4]

These two directives, given by the Sheriff, and which the Tribe here complains of, dealt with tribal civil law enforcement officers' continued exercise of California peace officer authority, when they were undisputedly neither California peace officers, nor federal officers authorized to exercise peace officer powers by California statutes, such as CA Penal Code § 830.8. Accordingly, the Sheriff ordered that the civil law enforcement officers:

> "(A) cease and desist the unlawful exercise of California peace officer authority both within and outside tribal property and
>
> "(B) cease and desist possessing firearms outside tribal property (e.g. court appearances)."
>
> (Underscore supplied.) (Tribe's ER, Tab 10, page 24, 4th full paragraph.)

In response, the Tribe sent its January 15, 2015, letter advising that, while the Tribe disagreed with the Sheriff's "interpretation of the facts" and his "interpretations of applicable law," the Tribe had taken the following actions as a show of good faith and to keep the peace:

[4] The letter actually directed a total of three things – but the third was not a substantive action. It was, instead, a request, or demand, that the Tribe provide a response to the Sheriff within 10 days, which the Tribe willingly provided, on January 15, 2015. The writing of the response letter to Sheriff Lutze is not a matter that is a subject of complaint by the Tribe herein.

> "… we have directed our tribal police officers to ensure that the matters outlined in your January 6, 2015 letter are addressed. Specifically, our tribal law enforcement officers will not exercise California peace officer authority on or off the reservation. In addition, our tribal police officers will carry their firearms only on the Bishop Paiute Indian Reservation with the exception of: (a) daily patrols that require them to cross State Hwy 168 and when traversing U.S. Highway 395, and (b) traveling to and from their homes off the reservation. The officers have been directed that they are not authorized by the Tribe to expose their firearms off reservation except in compliance with applicable state law." (Underscore supplied.) (Tribe's ER, Tab 4, page 6, 3rd paragraph.)

In its Brief, the Tribe goes to exhaustive length to claim that it has inherent authority, coming from somewhere, or from the natural order of the world, perhaps, beginning at some unknown time, to investigate non-Indians for whatever the Tribe believes might be actual, or suspected, violations of California state and United States federal criminal laws within Indian country.

The Tribe acknowledges that it does not have the power of criminal jurisdiction, through its Courts, to "try and punish" non-Indians for violation of tribal laws. Tribe's Brief, page 8. However, it never-the-less claims that it somehow has jurisdiction over non-Indians who the Tribe suspects, through a different Tribal agency – its police department that enforces the Tribe's civil laws – of violating other and different sovereigns' criminal laws – namely the State of California and the United States – within Indian country.

The Sheriff's order was simple: comply with California criminal laws regarding not exercising California peace officer authority – because you have not yet qualified as, and have not yet been made, California peace officers through the programs available to you; and also comply with California laws regarding firearms. The Tribe stated they would do so.

The Tribe now wants the district court, by way of over-arching order and directive, to, in essence, tell a California Sheriff (and by extension, if they withstand the certain appeal, all Sheriffs, and all other state and federal law enforcement officers and officials, including without limit United States Attorneys, in all of the states of the Ninth Circuit) that the Tribe's civil law enforcement officers (who could become both California peace officers, and federal law enforcement officers, through already existing programs created by the California legislature and United States Congress) do not need to do that. To order that, instead, these persons, with unregulated state or federal training, have the "inherent" right to conduct their own investigations of other sovereign's laws.

The findings of the district court on page 7 of its Order, at lines 5 through 26 are determinative of the issue. Those findings are:

> "The Tribe's FAC does not allege 'a definite and concrete dispute' regarding what anticipated conduct is involved with the declaratory and injunctive relief it seeks…. 'Such unknown … claims do not present

> an immediate or real threat to [the Tribe and its officers] such that declaratory [and/or injunctive] relief is proper,' … since 'the mere existence of … a generalized threat of prosecution [does not] satisfy the 'case or controversy' requirement. Further, '[f]or purposes of a preenforcement challenge …, the constitutional ripeness inquiry focuses on [inter alia] … whether the [Tribe has] articulated a concrete plan [demonstrating that one of its police officers intends] to violate the law in question.' The Tribe therefore has not shown the 'immediacy and reality' of a 'substantial controversy between the parties' that is required to establish a justiciable case or controversy."

For the district court to do, or hold, otherwise, would require the court to make a generalized, and over-arching, statement of law that would be, by its very nature, fraught with generality and ambiguity as to specific fact situations. This would provide little if any guidance to the parties; but rather, it would only lead to argument and unrest in the relationships, not only of the instant parties – but on appeal, if upheld, in the relationships of state and federal law enforcement officials and prosecutors, throughout the Ninth Circuit, with Indian tribes throughout the Ninth Circuit.

CONCLUSION

By way of all of the foregoing, the district court does not have subject matter jurisdiction in the case presented to it by the Tribe because (1) the case and claim presented does not arise under the Constitution, laws, or treaties of the United States; and (2) the case and claim presented does not present a

justiciable case or controversy in that the same does not show the requisite 'immediacy and reality' of a 'substantial controversy between the parties' in the definite fact-developed and fact-specific manner required for adjudication.

Appellees Inyo County, Sheriff William Lutze, and District Attorney Thomas Hardy respectfully submit and request that, for each of the foregoing independent reasons, this Court find that there is no subject matter jurisdiction of the district court over the Tribe's case; that the ruling of the district court also be affirmed; and that this case and appeal be dismissed.

Appellees also respectfully submit and request that this Court exercise its authority under Circuit Rule 3-6 "Summary Disposition of Civil Appeals," and dismiss this appeal, without further notice of proceedings, due to lack of subject matter jurisdiction. The text of Circuit Rule 3-6 has been provided above; and it also appears in the attached Addendum of authorities cited.

DATED: March 16, 2016

Respectfully submitted,

Law Offices of John D. Kirby,
A Professional Corporation

By s/ John Douglas Kirby
John Douglas Kirby

Attorney for Appellees INYO COUNTY; WILLIAM LUTZE, Sheriff of Inyo County; and THOMAS HARDY, District Attorney of Inyo County

CERTIFICATION OF COMPLIANCE

[F.R.A.P. 32(a)(7)(C) AND CIRCUIT RULE 32-1]

I certify that pursuant to F.R.A.P. 32 (a)(7)(C) and Ninth Circuit Rule 32-1, the attached answering brief is proportionately spaced, has a typeface of 14 points or more, and contains 11,670 words, including the attached Addendum, which is less than the maximum 14,000 words permitted.

Dated: March 16, 2016

s/ John Douglas Kirby
JOHN DOUGLAS KIRBY

STATEMENT OF RELATED CASES

[Circuit Rule 28-2.6]

Appellees are unaware of any related cases pending in this Court.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of Appelles and the attached Addendum with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 16, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: March 16, 2016

s/ John Douglas Kirby
JOHN DOUGLAS KIRBY

ADDENDUM OF CITED CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

ADDENDUM OF CITED CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

Pursuant to Federal Rules of Appellate Procedure, Rule 28(f), and Circuit Rule 28-2.7

Constitution, Article III (as amended by 11th Amendment)

Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;-- to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Constitution, Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

United States Statutes

28 U.S.C. § 1291 Final decisions district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

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28 U.S.C. § 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. (Emphasis supplied)

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28 U.S.C. § 1362. Indian tribes

The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States. (Emphasis supplied)

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28 U.S.C. § 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

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28 U.S.C. § 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

INDIAN LAW ENFORCEMENT REFORM ACT - 1990

25 U.S.C. § 2802. Indian law enforcement responsibilities

(a) Responsibility of Secretary

The Secretary, acting through the Bureau, shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country as provided in this chapter.

(b) Office of Justice Services

There is established in the Bureau an office, to be known as the "Office of Justice Services", that, under the supervision of the Secretary, or an individual designated by the Secretary, shall be responsible for--

(1) carrying out the law enforcement functions of the Secretary in Indian country, and

(2) implementing the provisions of this section.

(c) Additional responsibilities of Division

Subject to the provisions of this chapter and other applicable Federal or tribal laws, the responsibilities of the Office of Justice Services in Indian country shall include--

(1) the enforcement of Federal law and, with the consent of the Indian tribe, tribal law;

(2) in cooperation with appropriate Federal and tribal law enforcement agencies, the investigation of offenses against criminal laws of the United States;

(3) the protection of life and property;

(4) the development of methods and expertise to resolve conflicts and solve crimes….

* * * * *

25 U.S.C. § 2804. Assistance by other agencies

(a) Agreements

(1) In general

Not later than 180 days after July 29, 2010, the Secretary shall establish procedures to enter into memoranda of agreement for the use (with or without reimbursement) of the personnel or facilities of a Federal, tribal, State, or other government agency to aid in the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the Secretary to enforce tribal laws.

(2) Certain activities

. . . . .

(3) Program enhancement

. . . . .

(A) (i) In general

The procedures described in paragraph (1) shall include the development of a plan to enhance the certification and provision of special law enforcement commissions to tribal law enforcement officials, and, subject to subsection (d), State and local law enforcement officials, pursuant to this section.

* * * * *

Federal Regulations

25 C.F.R. § 12.12

What about self-determination?

The regulations in this part are not intended to discourage contracting of Indian country law enforcement programs under the Indian Self-determination and Education Assistance Act (Pub.L. 93–638, as amended, 25 U.S.C. 450). The Deputy Commissioner of Indian Affairs will ensure minimum standards are maintained in high risk activities where the Federal government retains

liability and the responsibility for settling tort claims arising from contracted law enforcement programs. It is not fair to law abiding citizens of Indian country to have anything less than a professional law enforcement program in their community. Indian country law enforcement programs that receive Federal funding and/or commissioning will be subject to a periodic inspection or evaluation to provide technical assistance, to ensure compliance with minimum Federal standards, and to identify necessary changes or improvements to BIA policies.

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25 C.F.R. § 12.21

What authority is given to Indian country law enforcement officers to perform their duties?

BIA law enforcement officers are commissioned under the authority established in 25 U.S.C. 2803. BIA may issue law enforcement commissions to other Federal, State, local and tribal full-time certified law enforcement officers to obtain active assistance in enforcing applicable Federal criminal statutes, including Federal hunting and fishing regulations, in Indian country.

(a) BIA will issue commissions to other Federal, State, local and tribal full-time certified law enforcement officers only after the head of the local government or Federal agency completes an agreement with the Commissioner of Indian Affairs asking that BIA issue delegated commissions. The agreement must include language that allows the BIA to evaluate the effectiveness of these special law enforcement commissions and to investigate any allegations of misuse of authority.

* * * * *

California Statutes – California Penal Code

§ 830. Peace officers; persons included and excluded

Any person who comes within the provisions of this chapter and who otherwise meets all standards imposed by law on a peace officer is a peace

officer, and notwithstanding any other provision of law, no person other than those designated in this chapter is a peace officer….

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§ 830.1. Persons who are peace officers; extent of authority

(a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, any chief of police, or police officer of a district, including police officers of the San Diego Unified Port District Harbor Police, authorized by statute to maintain a police department, any marshal or deputy marshal of a superior court or county, any port warden or port police officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer….

(b) The Attorney General and special agents and investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of the County of Los Angeles, and any deputy sheriff of the Counties of Butte, Calaveras, Colusa, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to

his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency.

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§ 830.6. Deputized or appointed personnel; peace officer status; powers and duties

(a)(1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff . . . or a reserve housing authority patrol officer employed by a housing authority defined in subdivision (d) of Section 830.31, and is assigned specific police functions by that authority, the person is a peace officer, if the person qualifies as set forth in Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph extends only for the duration of the person's specific assignment. A reserve park ranger or a transit, harbor, or port district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency.

(2) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff . . . and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph includes the full powers and duties of a peace officer as provided by Section 830.1…..

(b) Whenever any person designated by a Native American tribe recognized by the United States Secretary of the Interior is deputized or appointed by the county sheriff as a reserve or auxiliary sheriff or a reserve deputy sheriff, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by the county sheriff, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a peace officer pursuant to this subdivision includes the full powers and duties of a peace officer as provided by Section 830.1.

* * * * *

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§ 830.8. Federal employees; Washoe tribal law enforcement officers

(a) Federal criminal investigators and law enforcement officers are not California peace officers, but may exercise the powers of arrest of a peace officer in any of the following circumstances:

(1) Any circumstances specified in Section 836 of this code or Section 5150 of the Welfare and Institutions Code for violations of state or local laws.

(2) When these investigators and law enforcement officers are engaged in the enforcement of federal criminal laws and exercise the arrest powers only incidental to the performance of these duties.

(3) When requested by a California law enforcement agency to be involved in a joint task force or criminal investigation.

(4) When probable cause exists to believe that a public offense that involves immediate danger to persons or property has just occurred or is being committed.

In all of these instances, the provisions of Section 847 shall apply. These investigators and law enforcement officers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfied the training requirements of Section 832, or the equivalent thereof.

This subdivision does not apply to federal officers of the Bureau of Land Management or the United States Forest Service. These officers have no authority to enforce California statutes without the written consent of the sheriff or the chief of police in whose jurisdiction they are assigned.

(b) Duly authorized federal employees who comply with the training requirements set forth in Section 832 are peace officers when they are engaged in enforcing applicable state or local laws on property owned or possessed by the United States government, or on any street, sidewalk, or property adjacent thereto, and with the written consent of the sheriff or the chief of police, respectively, in whose jurisdiction the property is situated.

* * * * *

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§ 832. Training course prescribed by Commission on Peace Officer Standards and Training; examination; necessity to exercise powers; exemptions; examination fees

(a) Every person described in this chapter as a peace officer shall satisfactorily complete an introductory training course prescribed by the Commission on Peace Officer Standards and Training. On or after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by the commission. Training in the carrying and use of firearms shall not be required of a peace officer whose employing agency prohibits the use of firearms.

(b)(1) Every peace officer described in this chapter, prior to the exercise of the powers of a peace officer, shall have satisfactorily completed the training course described in subdivision (a).

(2) Every peace officer described in Section 13510 or in subdivision (a) of Section 830.2 may satisfactorily complete the training required by this section as part of the training prescribed pursuant to Section 13510.

(c) Persons described in this chapter as peace officers who have not satisfactorily completed the course described in subdivision (a), as specified in subdivision (b), shall not have the powers of a peace officer until they satisfactorily complete the course.

* * * * *

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§ 832.3. Training as prerequisite or condition of continued employment for peace officer powers; training proficiency testing program

Section operative until Jan. 1, 2019. See, also, section operative Jan. 1, 2019.

(a) Except as provided in subdivision (e), any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first

employed after January 1, 1975, shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. Each police chief, or any other person in charge of a local law enforcement agency, appointed on or after January 1, 1999, as a condition of continued employment, shall complete the course of training pursuant to this subdivision within two years of appointment. The training course for a sheriff, an undersheriff, and a deputy sheriff of a county, and a police chief and a police officer of a city or any other local law enforcement agency, shall be the same.

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§ 832.6. Deputies or appointees as reserve or auxiliary officers; powers of peace officer; conditions

(a) Every person deputized or appointed, as described in subdivision (a) of Section 830.6, shall have the powers of a peace officer only when the person is any of the following:

(1) A level I reserve officer deputized or appointed pursuant to paragraph (1) or (2) of subdivision (a) or subdivision (b) of Section 830.6 and assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training. For level I reserve officers appointed prior to January 1, 1997, the basic training requirement shall be the course that was prescribed at the time of their appointment. Reserve officers appointed pursuant to this paragraph shall satisfy the continuing professional training requirement prescribed by the commission.

* * * * *

(b) Notwithstanding subdivision (a), a person who is issued a level I reserve officer certificate before January 1, 1981, shall have the full powers and duties of a peace officer as provided by Section 830.1 if so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, if the appointing authority determines the person is qualified to perform general law enforcement duties

by reason of the person's training and experience. Persons who were qualified to be issued the level I reserve officer certificate before January 1, 1981, and who state in writing under penalty of perjury that they applied for but were not issued the certificate before January 1, 1981, may be issued the certificate before July 1, 1984. For purposes of this section, certificates so issued shall be deemed to have the full force and effect of any level I reserve officer certificate issued prior to January 1, 1981.

(c) In carrying out this section, the commission:

(1) May use proficiency testing to satisfy reserve training standards.

(2) Shall provide for convenient training to remote areas in the state.

(3) Shall establish a professional certificate for reserve officers as defined in paragraph

* * * * *

Circuit Rule 3-6
Summary Disposition Of Civil Appeals

Circuit Rule 3-6 provides in pertinent part:

> "At any time prior to the disposition of a civil appeal if the Court determines that the appeal is not within its jurisdiction, the Court may issue an order dismissing the appeal without notice of further proceedings."